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November 16, 2005

VIA HAND DELIVERY

Dwight D. Nodes
Assistant Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

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Re: Accipiter Complaint; Docket No. T-03471A-05-0064;
November 17, 2005 Procedural Conference

Dear Judge Nodes:

We are the attorneys for Vistancia, L.L.C. f/k/a Shea Sunbelt Pleasant Point, L.L.C. and Vistancia Communications, L.L.C. (collectively "Vistancia"). In prior correspondence, we have advised the Commission that neither entity is a public service corporation, is not participating in this docket and the Commission has neither personal jurisdiction over them nor subject matter jurisdiction over the complaint as to them under A.R.S. Sec. 40-246. Williams v. Ariz.Corp.Com'n, 102 Ariz. 382, 383, 430 P.2d 144, 145 (1967); Atty. Gen. Op. 77-150.

Without conceding the merits of any of the claims, Accipiter, Cox and Vistancia have satisfactorily resolved the issues which were the subject of disputes among them and Accipiter filed a Notice of Withdrawal with Prejudice in this matter on November 8, 2005. A Procedural Conference is scheduled for tomorrow at 10:00 a.m.

Utilities Division Staff has requested that we participate in the public comment portion of tomorrow's Procedural Conference to answer questions, if any. We are willing to do so on the express understanding that our participation (1) is not an appearance on Vistancia's behalf in this docket, (2) is not a consent to Commission jurisdiction over Vistancia and (3) does not waive and expressly reserves Vistancia's jurisdictional positions stated previously.

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If our appearance on this basis is not acceptable, we would ask that you so advise at the beginning of the Procedural Conference. Your assistance in relation to this matter is appreciated.

Very truly yours,

GALLAGHER & KENNEDY, P.A.



By:
Michael M. Grant

ORIGINAL and **13 COPIES** filed
this 16th day of November, 2005, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 16th day of November, 2005, to:

Judge Dwight D. Nodes, Hearing Division
The Honorable Jeff Hatch-Miller
Chairman William Mundell
Commissioner Marc Spitzer
Commissioner Mike Gleason
Commissioner Kristen K. Mayes
Maureen A. Scott, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

COPY E-Mailed
this 16th day of November, 2005, to:

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Roshka Heyman & DeWulf, P.L.C.
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Attorney for Cox Arizona Telecom

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